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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,604	01/28/2004	Haixiang Liang	14541US02	5206

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EXAMINER
CHEN, QING

ART UNIT	PAPER NUMBER
2191	

MAIL DATE	DELIVERY MODE
06/30/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/767,604	LIANG ET AL.
	Examiner	Art Unit
	Qing Chen	2191

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>21 June 2010</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

    b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b)☐ They raise the issue of new matter (see NOTE below);

    (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

    NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: _____.

    Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Anna Deng/
Primary Examiner, Art Unit 2191

U.S. Patent and Trademark Office

PTOL-303 (Rev. 08-06)   Advisory Action Before the Filing of an Appeal Brief   Part of Paper No. 20100623

Continuation of 11. does NOT place the application in condition for allowance because:

Regarding the Applicant's arguments on page 10 to page 17 of the "Remarks" pertaining to the rejections of the claims made under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a), the Applicant asserts that nowhere in Abdeliah is there any disclosure regarding fully recording input information arriving at one or both of the first input and the second input. Applicant's arguments are fully considered, but found to be not persuasive for at least the following reasons:

First, with respect to the Applicant's assertion that nowhere in Abdelilah is there any disclosure regarding fully recording input information arriving at one or both of the first input and the second input, as previously pointed out in the Final Rejection (mailed on 04/19/2010) and further clarified hereinafter, the Examiner respectfully submits that Abdelilah clearly discloses "a recording module processor communicatively coupled to the first input and the second input that operates to fully record input information arriving at one or both of the first input and the second input during real-time operation of the modem device for subsequent non-real-time analysis" (see Column 9: 66 and 67 to Column 10: 1-49, "… the teachings of the present invention are particularly directed to environments in which both a primary path and a secondary path are available to the DSP memory 345 to provide for monitoring operations to occur in real time while a communication connection is active through the modem. As is evident from the types of information identified above which may be monitored according to the present invention, a significant amount of performance information can be tracked during a communication connection, for example, on a minute-by-minute basis or responsive to detection of the occurrence of certain events. The monitoring system of the present invention may be utilized to monitor internal states of the modem 310 or state transitions of one or more state machines implemented within the modem 310 and to selectively record specified parameters out of the total set of parameters available within the DSP memory 345 during state conditions where the selected parameters are significant or of potential interest to a diagnostic user." and "Information may be collected on a real time basis and recorded during the life of a connection. Furthermore, information about disconnects may be gathered and throughput for a connection can be estimated. In addition, data may also be collected when a connection is being attempted, in other words, during the startup phases before a connection is in use for data communication." and "Furthermore, as performance information may be collected on a real-time basis during a connection, pertinent data may be preserved which might otherwise be lost as a result of an event causing diagnostic data in the DSP memory 345 to be overwritten (for example, during retrains). The performance data may be recorded while the user of the client modem 310 is actively connected to a remote server modem in a normal manner such as through a service provider end user application (e.g. AOL, IGN Dialer and Windows Dial-up Networking) executing on the host system 300. Performance data may be obtained throughout the active connection operations including both the startup phases and during data communication as well as the disconnect procedures."). Note that Abdelilah's invention is directed to monitoring the performance of a modem which may be able to obtain data in real-time. Abdelilah discloses that real-time modem performance data, internal states of the modem, modem communication data, and modem startup and disconnect data, etc. are recorded during the life of a connection of the modem. Thus, one of ordinary skill in the art would readily comprehend that pertinent data and information related to the performance of the modem must be fully recorded in order to provide a complete analysis of the performance of the modem at a later time. For further clarification, the Examiner also submits that in order for Abdelilah's invention to monitor the performance of a modem, all data related to the performance of the modem must be recorded. Otherwise, the manufacturer of the modem would not be able to completely monitor the performance of the modem and diagnose any performance problems of the modem due to insufficient performance data collected.

Second, the Examiner further submits that in the "Remarks" (received on 01/27/2010), the Applicant states that the Applicant's specification explicitly teaches fully recording the information that is input to a real-time communication device in paragraphs [11], [22], and [29]. Paragraphs [11], [22], and [29] of the Applicant's specification discloses that the recorded input information are the data, samples, and commands of a communication device, such as a modem. Abdelilah clearly discloses recording the data, samples, and commands of a modem. As discussed in the first reason hereinabove, Abdelilah's invention records real-time modem performance data, internal states of the modem, modem communication data, and modem startup and disconnect data, etc. during the life of a connection of the modem. One of ordinary skill in the art would readily recognize that the various pertinent data and information recorded are the data, samples, and commands of the modem.

Therefore, for at least the reasons set forth above, the rejection made under 35 U.S.C. § 102(e) with respect to Claim 9 and the rejections made under 35 U.S.C. § 103(a) with respect to Claims 19 and 27 are proper and therefore, maintained.